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SUBJECT: FOURTH VISIT OF STATUS OF FORCES NEGOTIATION TEAM
TO PRAGUE

REF: PRAGUE 1205

1.(SBU) Summary and Comment: From December 11-13, PM Senior Advisor Ambassador Jackson McDonald led an interagency team in Prague through the fourth round of negotiations for the Supplemental Status of Forces Agreement (SOFA). Ivan Dvorak, Director of Strategy and Policy at the Czech Ministry of Defense, led the Czech inter-ministerial delegation. Significant progress was made on important environmental portions of the text, an area that had not been substantively addressed in previous rounds. Both sides also made progress on criminal jurisdiction and construction standards. As the agreements have several overlapping provisions, Ambassador McDonald and several members of the SOFA team remained in Prague for the fourth round of Ballistic Missile Defense Agreement (BMDA) negotiations on December 14.

2.(SBU) Although sticking to their strict negotiating mandate, Dvorak and other Czech negotiators indicated on several occasions they may have greater flexibility on major issues, such as scope and symbolic rent, after a January 17 Czech National Security Council review of their negotiating positions. Taxes and labor issues will be a major focus of the next round in late January. Both the Czech and American teams expect two or perhaps three more rounds will be required to finish the SOFA talks. End Summary and Comment.

Environment

3.(SBU) Four senior Department of Defense (DOD) environmental experts exchanged information with their Czech counterparts at the Ministry of Environment during the week of December 5. The team members stayed for the first day of SOFA negotiations to help the legal team draft language for the SOFA text. The Czechs largely accepted the U.S. proposal requiring the U.S. to respect, as opposed to comply with, Czech environmental laws.

Criminal Jurisdiction

4.(SBU) Per reftel, the Czechs refusal to provide a blanket, advance waiver of primary criminal jurisdiction had been one of the major stumbling blocks to completing the SOFA agreement. During this round, the U.S. accepted the Czech proposal that the Czechs would have primary jurisdiction over any offenses committed outside of the radar base. However, the U.S. can ask the Czechs to waive their right of jurisdiction. If the Czechs agree or do not respond within 30 days, the U.S. will have primary jurisdiction over the case. This is similar to the formulation the U.S. has in other

countries, e.g. Spain.

Construction Disputes

5.(SBU) Both sides also developed a mechanism to resolve construction disputes. The U.S. agreed to provide the Czech executive agent, most likely the Ministry of Defense, with drawings and plans for any construction projects at the proposed facility. The Czech authorities will have the right to monitor construction projects to insure compliance with the submitted plans. However, if the inspector believes the project deviates from the plans, he or she must seek approval from a senior MOD official to suspend construction. A U.S.-Czech Joint Commission would then seek to resolve the impasse. Unfortunately, the Czechs still insist that their construction standards apply to the non-mission areas of the proposed radar facility.

Taxes and Labor Issues

6.(SBU) The fourth round revealed that the SOFA tax provisions remain one of the major outstanding issues. Czech Ministry of Finance officials are still struggling to comprehend many of the SOFA,s concepts. They also must fully understand their relationship to European Union directives, Czech domestic legislation, the U.S.-Czech Treaty for the Avoidance of Double Taxation, and existing obligations under the NATO SOFA. The Czechs continue to insist that all employment at the radar facility conform to the Czech,s very restrictive labor laws. The planned expert consultations before the next round should help resolve these two areas of concern.

7.(U) Ambassador McDonald cleared this cable.
Thompson-Jones